

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling

PHILLIP DAMRON,

Plaintiff,

v.

CIVIL ACTION No. 5:22-CV-152
Judge Bailey

KILOLO KIJAKAZI, Commissioner of Social
Security,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of the United States Magistrate Judge Michael John Aloi [Doc. 18]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Aloi for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Aloi filed his R&R on June 6, 2023, wherein he finds that the Commissioner's decision denying plaintiff's claim for disability insurance benefits does not contain legal error and is supported by substantial evidence. Magistrate Judge Aloi recommends that plaintiff's Motion for Summary Judgment be denied, defendant's Motion for Summary Judgment be granted, the decision of the Commissioner be affirmed, and this case be dismissed with prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the

factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone’s R&R were due within fourteen (14) days of receipt of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Having filed no objections within that time frame, plaintiff has waived his right to both *de novo* review and to appeal this Court’s Order pursuant to 28 U.S.C. § 636(b)(1). Consequently, the R&R will be reviewed for clear error. Having reviewed the R&R for clear error, it is the opinion of this Court that the Report and Recommendation [Doc. 18] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge’s report. Accordingly, this Court further **ORDERS** that Plaintiff Phillip Damron’s Motion for Summary Judgment [Doc. 11] be

DENIED and Defendant's Brief in Support of Her Motion for Summary Judgment [Doc. 14] be **GRANTED**. The decision of the Commissioner is **AFFIRMED** and this case is hereby **DISMISSED WITH PREJUDICE**.

This Court further **DIRECTS** the Clerk to enter judgment in favor of the defendant and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein.

DATED: June 21, 2023.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE